

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested.

Claims 1-3, 7-22, 26, and 28-30 remain in the application.

Specification

The specification was objected to for lacking a "Summary of the Invention." Applicant's position in the Reply filed October 30, 2003 is that the summary is entirely voluntary as the rule only states that the summary should precede the detailed description.

The Action disagrees, directing the Applicant to MPEP § 608.01(d). However, section 608.01(d) supports Applicant's position. MPEP § 608.01(d) states that "Such summary should, when set forth..." (emphasis). The use of the word "should" followed by "when set forth" clearly indicates that in some instances a summary may not be set forth, and hence inclusion of a summary, according to the MPEP, is not a requirement.

Claim Rejections - 35 USC § 103

Claims 1-3, 7-22, 26, and 28-30 were rejected under 35 U.S.C. 103(a) for allegedly being unpatentable over Suzuki et al. (US 6,227,968, hereinafter "Suzuki") and Nguyen (US 6,255,033).

The rejections are respectfully traversed.

"Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." **MPEP 2143.01**, citing In re

Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

There is no explicit or implicit suggesting or motivation in Suzuki or Nguyen to combine the references. The Action states that the step-on base of Suzuki, "does not recognize the movements of the rest of the body as intended in Suzuki (col. 1, lines 44-51)..." (emphasis added). However, that passage in Suzuki states that, "An object of the present invention, which has been achieved in view of the foregoing, is to provide a dance game apparatus which... creates rhythm sensations by using the entire body...and to provide a step-on base which is suitably used for the game" (emphasis added). According to Suzuki, its intentions (objects) have been satisfied, so there is no explicit or implicit suggestion or motivation to use another type of user input.

The Action states in the Response to Arguments section that, "One of ordinary skill in the art would have readily recognized the advantage of the video gesture recognition of Nguyen over the step on base gesture recognition of Suzuki at the time of the invention. Therefore, one of ordinary skill in the art would have been motivated to substitute the gesture recognition (step-on base) of Suzuki with the more sophisticated gesture recognition of Nguyen for a more accurate capture of dance moves (i.e., capturing the entire body instead of just the feet.)" Since there is no explicit or implicit suggestion in the references themselves to combine the references, the Action is apparently relying on the level of skill in the art to provide the motivation for combination. However, this is precisely the type of reasoning that was rejected in In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998), in which the Court, recognizing that the Board of Patent Appeals and Interferences merely invoked the level of skill in

the art, inferred that the examiner selected the references with the assistance of hindsight. *Id.* at 1357-1358. The pertinent art here is arcade games, in particular, dance games. At the time of the invention, arcade games did not use gesture recognition or video capture of the player generally for user input, but rather relied on mechanical means, such as joysticks, paddles, buttons, triggers, and pressure-sensitive devices, such as the cable sensors (23) used in Suzuki. Accordingly, one of ordinary skill in the art would not have considered video gesture recognition system as a viable alternative to the user input used in Suzuki, and would have no motivation to combine the teachings of Suzuki and Nguyen.

A *prima facie* showing of obviousness requires that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." **MPEP 2142.**

The combination of Suzuki and Nguyen (which Applicant considers to be improper) does not teach all limitations of the claims. Consider exemplary independent claim 1, which recites in relevant part:

"...receiving audio data having a beat;  
forming beat data based on said audio data;

determining a gesture window within which a gesture should occur, based on a specified time window relative to said beat data;

segmenting said video data to create a video clip of time including specified timing window..." (emphasis added).

Suzuki does not form beat data based on received audio data having a beat. Rather, beat (rhythm) data is associated with the audio (music) data in a table (col. 7, lines 46-50).

Furthermore, Nguyen does not teach segmenting captured video data into a clip having a timing window corresponding to beat data or any other type of calculated data. Nguyen teaches




examining individual frames, not video clips. Furthermore, the only type of segmenting Nguyen teaches is manually dictated ("the system determines the location of the key points in a model representing the new gesture based on the starting and ending times provided by the user" (emphasis added) (col. 11, lines 23-26)).

For the reasons stated above Applicant submits that the Action has failed to make a *prima facie* case of obviousness, and that independent claims 1, 14, 26, and 28, and their dependencies, are allowable.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: March 16, 2004

  
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Scott C. Harris  
Reg. No. 32,030

Attorneys for Intel Corporation  
**PTO Customer No. 20985**  
Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, California 92130  
Telephone: (858) 678-5070  
Facsimile: (858) 678-5099

**/BY**  
**KENYON S. JENCKES**  
**REG. NO. 41,873**